

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

PHILIP MORRIS USA INC.,)	
)	
Plaintiff,)	Civil Action No. 08-028-SLR
)	
v.)	
)	
TABOCA AS and NORDIC AMERICAN)	
SMOKELESS INC. f/k/a)	
TABOCA USA INC.,)	
)	
Defendants.)	

DECLARATION OF ROBERTA L. HORTON UNDER 28 U.S.C. SECTION 1746

I, ROBERTA L. HORTON, declare under oath and on the basis of personal knowledge as follows:

1. I am a partner at the law firm of Arnold & Porter LLP in Washington D.C. I am co-counsel representing Plaintiff Philip Morris USA Inc. ("PM USA") in the present action. I submit this Declaration in support of Plaintiffs' Memorandum In Opposition To Defendant Nordic American Smokeless Inc.'s Motion To Dismiss Plaintiff's First Amended Complaint Or, Alternatively, Motion For Summary Judgment. In the following paragraphs, I briefly explain PM USA's need to take discovery in this action. I also reference and attach a press release regarding the appointment of a new marketing executive at Nordic American Smokeless Inc. ("Nordic American"), which describes the interrelationship between the Defendant companies and their officers. Finally, I attach a record of PM USA's TABOKA application relevant to this proceeding.

A. PM USA's Need for Discovery

2. PM USA has not yet had the opportunity to conduct discovery on the issues presented in Nordic American's Motion.

3. Among other things, PM USA intends to take discovery on: The overlap in officers, executives and employees between Nordic American and Taboca AS and, as a related matter, the assertions by Darren Quinn (President and CEO of Nordic American) in his April 12, 2008 Declaration that Nordic American and Taboca AS are separate corporations with different "overall directors, offices and employees" and that Nordic American is not a subsidiary of Taboca AS.

4. Other avenues of inquiry will include: The possible relationship between Nordic American and the Internet sellers of TABOCA snus; the reasons behind and persons supporting the name change from "Taboca USA Inc." to "Nordic American Smokeless Inc."; and documentation and witnesses supporting or refuting the press statement by Nordic American that it does not intend to use the "Taboca" name.

5. PM USA also intends to conduct discovery on Mr. Quinn's claims that Nordic American does not receive from Taboca AS any TABOCA products for resale in the United States and the notion that Nordic American does not plan or desire to sell any TABOCA products.

B. Nordic American's Press Release

6. Attached as Exhibit 1 is a copy of a March 1, 2008 press release announcing the appointment of William Eder as Vice President of Marketing for Nordic American.

7. This press release quotes Messrs. Darren Quinn and Richard Cutler -- officers of

Taboca AS -- in their capacity as executives of Nordic American. According to the press release, Darren Quinn is the President and CEO of Nordic American; Richard Cutler is the Executive Vice President of Nordic American.

C. The Status of PM USA's TABOKA Application

8. On May 5, 2005, PM USA filed an intent-to-use application (Serial No. 78/623,680) in the United States Patent and Trademark Office (the "USPTO") to register the mark TABOKA for, among other things, tobacco, raw or manufactured, chewing tobacco, and snuff tobacco.

9. The USPTO approved PM USA's application for this mark on May 4, 2006, and, on June 27, 2006, the application for TABOKA was published for opposition. On August 28, 2006, Taboca AS filed a Notice of Opposition against the TABOKA application.

10. On February 7, 2007, PM USA filed a motion for summary judgment, asserting that the Opposer could not establish priority of use in its purported TABOCA mark before PM USA's May 5, 2006 filing date. The Trademark Trial and Appeal Board granted PM USA's motion on December 18, 2007 and dismissed the Opposition with prejudice.

11. The USPTO has since issued a Notice of Allowance for PM USA's TABOKA mark on April 22, 2008. A copy of this Notice is attached at Exhibit 2.

I DECLARE under penalty of perjury that the foregoing is true and correct.

Executed on May 2, 2008.



Roberta L. Horton

EXHIBIT 1

William E. Eder Named Vice President of Marketing at Nordic American Smokeless Inc.

Sat Mar 1, 2008 9:04am EST

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William E. Eder Named Vice President of Marketing at Nordic American Smokeless Inc.

DANBURY, Conn., March 1 /PRNewswire/ -- Nordic American Smokeless Inc., a smokeless tobacco company whose quality products are based on a unique Swedish smokeless manufacturing process (snus), announced today the appointment of William E. "Bill" Eder as Vice President of Marketing.

Eder is a 40-year veteran in marketing, the last 24 years of which were with U.S. Smokeless Tobacco Company, where he was integral in successfully developing and implementing marketing programs focused on the introduction of new brands and developing communication media aimed at educating adult consumers about the unique attributes of smokeless tobacco products.

"Bill Eder is clearly a leader within the smokeless tobacco community. His extensive smokeless tobacco marketing experience will be instrumental in bringing the Nordic American product portfolio to the next level," said Darren Quinn, President and CEO. Executive Vice President, Richard Cutler added, "Bill's exceptional marketing and advertising background will assure Nordic American's flagship snus brands, Nordic Ice and Klondike, achieve success as we execute our go-to-market strategies."

During his recent 24-year tenure at U.S. Smokeless Tobacco Company, Eder served as director, marketing services and publisher of the adult consumer magazine Heartland USA.

Eder currently resides in Connecticut.

About Nordic American Smokeless Inc.

Nordic American Smokeless Inc. is a marketer and manufacturer of Swedish styled smokeless tobacco products (snus). Nordic American's flagship brands, Nordic Ice and Klondike, are scheduled for shipment in the first half of 2008. Nordic American is headquartered in Danbury, CT. The Company is an affiliate of the Norwegian snus company Taboca A/S, headquartered in Oslo, Norway.

This press release was issued through 24-7PressRelease.com. For further information, visit [here](#).

SOURCE Nordic American Smokeless Inc.

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EXHIBIT 2

Document Description: Notice of Allowance Mail / Create Date: 22-Apr-2008

**U.S. Patent and Trademark Office (USPTO)****NOTICE OF ALLOWANCE**

NOTE: If any data on this notice is incorrect, please fax a request for correction to the Intent to Use Unit at 571-273-9550. Please include the serial number of your application on ALL correspondence with the USPTO.

ISSUE DATE: Apr 22, 2008

Christopher P. Foley
Finnegan, Henderson, Farabow, Garrett et
901 New York Avenue NW
Washington, DC 20001-4413

ATTORNEY
REFERENCE NUMBER
TABOKA 2729A

**** IMPORTANT INFORMATION: 6 MONTH DEADLINE ****

You filed the trademark application identified below based upon a bona fide intention to use the mark in commerce. You must use the mark in commerce and file a Statement of Use (a.k.a. Allegation of Use) before the USPTO will register the mark. You have six (6) MONTHS from the ISSUE DATE of this Notice of Allowance (NOA) to file either a Statement of Use, or if you are not yet using the mark in commerce, a Request for Extension of Time to File a Statement of use ("Extension Request"). If you file an extension request, you must continue to file a new request every six months until the Statement of Use is filed. Applicant may file a total of five (5) extension requests. FAILURE TO FILE A REQUIRED DOCUMENT DURING THE APPROPRIATE TIME PERIOD WILL RESULT IN THE ABANDONMENT OF YOUR APPLICATION.

Please note that both the "Statement of Use" and "Extension Request" have many legal requirements including fees. Therefore, we encourage use of the USPTO forms, available online at <http://www.uspto.gov/teas/index.html> (under "File a PRE-registration form"), to avoid the possible omission of important information. Please note that the Trademark Electronic Application System (TEAS) provides line-by-line help instructions for completing the Extension Request or Statement of Use forms online. If you do not have access to the Internet, you may call 1-800-786-9199 to request the printed form(s).

The following information should be reviewed for accuracy:

SERIAL NUMBER: 78/623680
MARK: TABOKA (STANDARD CHARACTER MARK)
OWNER: Philip Morris USA Inc.
6601 West Broad Street
Richmond , VIRGINIA 23230

This application has the following bases, but not necessarily for all listed goods/services:

Section 1(a): NO Section 1(b): YES Section 44(e): NO

GOODS/SERVICES BY INTERNATIONAL CLASS

034 - Tobacco, raw or manufactured, including cigars, cigarettes, cigarillos, tobacco for roll your own cigarettes, pipe tobacco, chewing tobacco, snuff tobacco, tobacco substitutes not for medical purposes; smokers' articles, namely cigarette paper and tubes, cigarette filters, tobacco tins, cigarette cases and ashtrays not of precious metals, their alloys or coated therewith; smoking pipes, pocket apparatus for rolling cigarettes, lighters not of precious metals, matches -- FIRST USE DATE: NONE; -- USE IN COMMERCE DATE: NONE

ALL OF THE GOODS/SERVICES IN EACH CLASS ARE LISTED

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